

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LOCAL 234 OF THE INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS,)
AFL-CIO; INTERNATIONAL BROTHERHOOD) No. C-07-4079 SC
OF ELECTRICAL WORKERS' UNION, LOCAL) DEFAULT JUDGMENT
234 EDUCATIONAL AND TRAINING FUND;)
ELECTRICAL WORKERS HEALTH & WELFARE)
TRUST FUND; INTERNATIONAL)
BROTHERHOOD OF ELECTRICAL WORKERS)
DISTRICT 9 PENSION PLAN; AND KEN)
SCHERPINSKI AS TRUSTEE,)
Plaintiffs,)
v.)
ADM ELECTRIC, INC., a California)
Corporation; and G. DEAN ALLEMAND,)
an Individual,)
Defendants.)

I. INTRODUCTION

Plaintiffs brought this action alleging that defendants ADM Electric Corporation ("ADM") and its President, Dean Allemand (collectively "Defendants"), violated the terms of a collective bargaining agreement and the terms of a settlement arising from a previous dispute over the same agreement. See Compl., Docket No. 1. To date, Defendants have not made an appearance or filed a responsive pleading. The Clerk of the Court entered default as to both Defendants on September 28, 2007. Docket No. 7. Plaintiffs

1 now move the Court for entry of default judgment. Docket No. 11.
2 For the reasons set forth below, the motion is GRANTED. It is
3 hereby ORDERED, ADJUDGED AND DECREED that JUDGMENT shall be
4 entered in favor of Plaintiffs and against Defendants.

5
6 **II. BACKGROUND**

7 Defendant ADM entered a collective bargaining agreement with
8 Plaintiff Local 234 of the International Brotherhood of Electrical
9 Workers (the "Union"). See Compl. Ex. B ("CBA"). Pursuant to the
10 CBA, ADM was required to submit monthly transmittals and
11 contributions to Plaintiffs IBEW Local 234 Education & Training
12 Fund, Electrical Workers Health & Welfare Trust Fund, and IBEW
13 District 9 Pension Plan (the "Funds," collectively referred to
14 with the Union as "Plaintiffs"). Id. at 28-29. The contributions
15 were supposed to be based on the number of hours of covered work
16 completed by employees represented by the Union. Id. The Funds
17 provide benefits to the covered employees based on hours reported
18 in the monthly transmittals.

19 When ADM first fell behind in its monthly contributions, the
20 parties entered into the Settlement Agreement, in which Defendants
21 agreed that they owed Plaintiffs \$39,104.61 in principal from
22 delinquent contributions, \$17,154.29 in liquidated damages, and
23 \$5,000 in attorney's fees. See Compl. Ex. C ¶ 2 ("Settlement
24 Agreement"). Pursuant to the Settlement Agreement, Defendants
25 were to pay off this debt, totaling \$61,258.90, through monthly
26 payments of \$300 for twenty-four months beginning in June 2006,
27 and culminating in a balloon payment of \$54,058.90 due on or

1 before July 1, 2008. See id. ¶ 2(a), (b). Allemand agreed to be
2 held personally liable for ADM's debts. Id. at 3.

3 Following the Settlement Agreement, Defendants submitted
4 monthly payments for June 2006, July 2006, October 2006, November
5 2006, and December 2006. Arizmendez Decl. ¶ 3.¹ Defendants did
6 not make their monthly payments for August or September 2006, and
7 have not made any payments since December 2006. Id.

8 In addition to their failure to pay in accordance with the
9 Settlement Agreement, Defendants have also failed to stay current
10 with their monthly contributions to the Funds under the original
11 CBA. Specifically, Defendants failed to contribute \$4,347.00 to
12 the Electrical Workers Health & Welfare Trust Fund for February
13 2007. Arizmendez Decl. ¶ 4. This delinquency resulted in
14 liquidated damages of \$434.70. Id. Defendants paid \$4,746.00 for
15 March 2007, of which \$4,347.00 was applied to the delinquent
16 principal for February 2007, and \$399.00 was applied towards the
17 March 2007 principal. Id. Defendants did not pay the balance of
18 the March contribution, resulting in an additional \$474.60 in
19 liquidated damages. Id. Thus, apart from the amount owed under
20 the Settlement Agreement, Plaintiffs claim that Defendants owe an
21 additional \$4,347.00 in delinquent principal and \$909.30 in
22 liquidated damages. Id.

23 Defendants have not submitted their monthly transmittals to
24 the Electrical Workers Health & Welfare Trust Fund from April 2007
25

26 ¹Mira Arizmendez is an employee of the Union and submitted a
27 declaration in support of Plaintiffs' Motion for Default Judgment.
28 Docket No. 12.

1 to the present. Arizmendez Decl. ¶ 5. Defendants have not
2 submitted monthly transmittals to the IBEW District 9 Pension Plan
3 from February 2007 to the present. Id. Plaintiffs use the
4 transmittals to calculate the monthly contributions Defendants are
5 required to make to each of the Funds. Id.

6 The Funds filed a claim against ADM's California Contractors
7 State License Board Bond, which resulted in a payment of
8 \$4,000.00. De Nardo Decl. ¶ 3.²

9 Plaintiffs brought this suit seeking to recover delinquent
10 contributions pursuant to the Employee Retirement Income Security
11 Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., and the Labor
12 Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 141 et
13 seq., and to recover for breach of the Settlement Agreement. See
14 Compl. Plaintiffs seek \$5,256.30 plus pre-judgment interest for
15 Defendants' failure to make the March 2007 contribution to the
16 Electrical Workers Health & Welfare Trust Fund, \$55,578.90 plus
17 pre-judgment interest for breach of the Settlement Agreement, and
18 an award of reasonable fees and costs.

19
20 **III. LEGAL STANDARD**

21 After entry of default, the Court may enter a default
22 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do
23 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092
24 (9th Cir. 1980), is guided by several factors.

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26 _____
27 ²Scott De Nardo is Plaintiffs' attorney. He submitted a
28 declaration in support of Plaintiffs' Motion for Default Judgment.
Docket No. 13.

1 As a preliminary matter, the Court must "assess the adequacy
2 of the service of process on the party against whom default is
3 requested." Bd. of Trs. of the N. Cal. Sheet Metal Workers v.
4 Peters, No. C-00-0395 VRW, 2000 U.S. Dist. LEXIS 19065, at *2
5 (N.D. Cal. Jan. 2, 2001).

6 If the Court determines that service was sufficient, it may
7 consider the following factors in its decision on the merits of a
8 motion for default judgment:

9 (1) the possibility of prejudice to the
10 plaintiff, (2) the merits of plaintiff's
11 substantive claim, (3) the sufficiency of the
12 complaint, (4) the sum of money at stake in
13 the action; (5) the possibility of a dispute
14 concerning material facts; (6) whether the
15 default was due to excusable neglect, and (7)
16 the strong policy underlying the Federal Rules
17 of Civil Procedure favoring decisions on the
18 merits.

19 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The
20 general rule of law is that upon default the factual allegations
21 of the complaint, except those relating to the amount of damages,
22 will be taken as true." Geddes v. United Fin. Group, 559 F.2d
23 557, 560 (9th Cir. 1977). Therefore, for the purposes of this
24 Motion, the Court accepts as true the facts as portrayed in the
25 Complaint.

26 **IV. DISCUSSION**

27 **A. Service of Process**

28 Service of process against Defendants was adequate.
Defendant ADM was properly served on September 1, 2007. Docket
No. 3. Defendant Allemand was also properly served on the same

1 date. Docket No. 4.

2 **B. Merits of Motion**

3 Having considered all of the Eitel factors, the Court finds
4 default judgment appropriate in this matter. The prejudice to
5 Plaintiffs absent a judgment is clear. Defendants' repeated
6 failures to fulfill their obligations under the collective
7 bargaining agreement suggest that absent Court involvement, such
8 failures will continue. Further, the parties' previous attempt to
9 resolve this dispute is of little value if Defendants refuse to
10 abide by the terms of the Settlement Agreement. Based on the
11 terms of the Settlement Agreement and the declarations Plaintiffs
12 provided in support of their Motion, it appears likely that
13 Plaintiffs would prevail on all three causes of action in the
14 Complaint. Defendant Allemand personally accepted service for
15 himself and for ADM, so it is clear that he is aware of the
16 lawsuit, suggesting that his failure to make an appearance or file
17 a responsive pleading is not due to excusable neglect.

18 **C. Remedy**

19 The Court next determines the appropriate remedy. Where, as
20 here, a plaintiff brings suit on behalf of an ERISA plan to
21 recover delinquent contributions, and prevails, the Court must
22 award the plaintiff the total of the unpaid contributions,
23 interest on the unpaid contributions, reasonable costs and
24 attorney's fees, and the greater of the interest on the unpaid
25 contributions or the liquidated damages provided in the collective
26 bargaining agreement. 29 U.S.C. § 1132(g)(2)(A)-(D). The CBA
27 established that the interest rate for delinquent contributions

1 would be 10% per annum. CBA at 34; see also 29 U.S.C. §
2 1132(g)(2) (court should determine interest at the rate set in the
3 collective bargaining agreement). The Settlement Agreement
4 provides that if Defendants fail to pay as agreed, liquidated
5 damages and interest will be assessed. Settlement Agreement ¶ 2.
6 Both the CBA and the Settlement Agreement provide, as does the
7 statute, for Plaintiffs to recoup their reasonable attorney's fees
8 and costs necessary to recover the delinquent contributions. See
9 id.; CBA at 34.

10 Based on the foregoing, the Court calculates the award as
11 follows:

12 1. Breach of Settlement Agreement

13 Pursuant to the Settlement Agreement, Defendants owed
14 Plaintiffs \$39,104.61 in unpaid contributions and \$17,154.29 in
15 liquidated damages, for a total of \$56,258.90 in damages, plus
16 \$5,000 in attorney's fees. The damages were offset by five
17 monthly payments of \$300.00 (totaling \$1,500.00) and a \$4,000.00
18 recovery from Defendants' bond, reducing the total damages to
19 \$50,758.90. Interest began accruing on the damages on November 1,
20 2005, at a rate of 10% per year.³ The contract is silent on the
21 method of compounding interest. However, where a collective
22 bargaining agreement does not set an interest rate on delinquent
23 contributions, interest is calculated at the rates established in
24 26 U.S.C. § 6621. See 29 U.S.C. § 1132(g)(2). Interest
25 calculated in accord with 26 U.S.C. § 6621 is compounded daily.

26
27 ³Nothing in the Settlement Agreement suggests that interest
28 would accrue on the \$5,000 in attorney's fees.

26 U.S.C. § 6622(a). The Court therefore calculates interest at an annual rate of 10%, compounded daily from November 1, 2005, until the date of this Order. This results in \$50,578.90 in damages, \$15,829.66 in interest, and \$5,000 in attorney's fees, for a total of \$71,408.56.

2. Further Delinquent Contributions

Defendants owe an additional \$4,347.00 in unpaid contributions and \$909.30 in liquidated damages resulting from their failure to pay the March 2007 contribution to the Electrical Workers Health & Welfare Trust Fund. Pursuant to the terms of the CBA, the March 2007 contribution became delinquent on April 15, 2007. The Court therefore calculates interest at an annual rate of 10%, compounded daily from April 15, 2007, until the date of this Order. This results in \$5,256.30 in damages and \$712.42 in interest, for a total of \$5,698.72.

3. Fees and Costs

The \$5,000 in attorney's fees and costs included in the Settlement Agreement only accounts for fees incurred up to the effective date of that agreement. See De Nardo Decl. ¶ 3. Plaintiffs' counsel has submitted 29 pages of highly-detailed invoices, including contemporaneous time entries, for the period from November 2006 through January 2008. The total requested for fees and costs is \$7,536.26. Having reviewed the documentation accompanying Mr. De Nardo's declaration, as well as the rest of the filings in this case, the Court finds this total to be reasonable and awards Plaintiffs \$7,536.26.

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4. Total

The total award for all of the unpaid contributions, liquidated damages, pre-judgment interest, and reasonable attorney's fees and costs is therefore \$84,643.54.

V. CONCLUSION

For the foregoing reasons, the Court finds default judgment appropriate in this matter. JUDGMENT in the amount of \$84,643.54 shall be entered in favor of Plaintiffs and against Defendants. This award is in satisfaction of all delinquent contributions included in the parties' Settlement Agreement and the delinquent March 2007 contribution, and the associated pre-judgment interest and attorney's fees.

Defendants are further ordered to submit to Plaintiffs the monthly transmittals required under the CBA for the Electrical Workers Health & Welfare Trust Fund from April 2007 to the present and for the IBEW District 9 Pension Plan from February 2007 to the present. This judgment in no way limits Plaintiffs' rights to seek statutory or contractual remedies for any delinquencies they should discover in reviewing these transmittals.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: July 21, 2008

Samuel Conti
UNITED STATES DISTRICT JUDGE